



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121 and 125

[Docket No.: FAA-2013-0579; Amendment Nos. 91-329, 121-364 and 125-62]

RIN 2120-AK27

Flight Data Recorder Airplane Parameter Specification Omissions and Corrections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the operating regulations for flight data recorders by correcting errors in recording rates in three different appendices. These errors create requirements that could not be met by certain airplanes without extensive modification, which was not intended when the requirements were adopted. The corrected recording rates are as intended when the applicable flight data recorder parameter requirements were adopted, but which have been omitted from the current publication of the regulatory text.

DATES: Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments identified by docket number FAA-2013-0579 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action contact Chris Parfitt, Flight Standards Service, Aircraft Maintenance Division–Avionics Maintenance Branch, AFS-360, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385-6398; e-mail chris.parfitt@faa.gov.

For legal questions concerning this rule contact Karen Petronis, International Law, Legislation and Regulations Division (AGC-200), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3073, e-mail Karen.Petronis@faa.gov.

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

This rule corrects errors in the recording rates for two flight data recorder parameters. The errors appear in three appendices to the flight recorder requirements. The correct standards were adopted during full notice and comment rulemakings. The nature of the errors is explained in the preamble below. None of the errors changes a standard, nor will there be any effect on regulated entities other than to prevent future misunderstandings that would have been resolved when interested persons contact the FAA.

Accordingly, the FAA finds that further notice and comment are unnecessary.

Comments Invited

For the reasons noted above, the FAA is adopting this final rule without prior notice and public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice.

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the changes. The most helpful comments reference a specific portion of this rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or, if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Once the comment period closes, the FAA will review and dispose of the comments filed in the rulemaking docket. Because this is a final rule, the FAA will publish a disposition of comments in the Federal Register. Based on the comments received, the FAA will state whether it has decided that (i) no action is necessary other than publishing the disposition of comments in the Federal Register, or (ii) the FAA should prepare a revised final rule.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document. Mark the information that is considered proprietary or confidential. If the information is on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under § 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public does not have access, and the agency places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act, 5 U.S.C. 552. The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority

since flight data recorders are the only means available to account for airplane movement and flight crew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

I. Discussion of Final Rule

This final rule amends three appendices in 14 CFR related to flight data recorder (FDR) requirements.

First, Appendix E to part 91 is amended to correct what appears to be a typographical error introduced when the rule was published. Currently, for the altitude parameter, the sampling rate per second is listed as 11. The correct rate has always been 1 sample per second. A review of the original typewritten document that was submitted for publication suggests that a stray mark caused the number to be translated as 11. The sample rate of 1 per second was in the proposed rule (53 FR 4314; February 12, 1988) and the final rule (54 FR 34284; August 18, 1989). Since a sample rate of 11 is unknown in the industry and compliance would require a major airplane equipment modification, affected operators have understood that this was a typographical error, and complied with the 1 sample per second rate. Despite the age of the error, this correction does not comprise the adoption of a different standard that will affect airplanes operating under these regulations since any initial misunderstandings have been clarified when the agency was contacted.

The second and third corrections concern identical standards in Appendix M to part 121 and Appendix E to part 125. In each Appendix, footnote 5 was added following a petition for rulemaking from Airbus Industries and subsequent rulemaking to adopt the changes (64 FR 46117; August 24, 1999), as evidenced by the discussion in the preamble

to that rule. However, the current regulation lists only the adjustment for the resolution, and not the sampling interval. This action puts the sampling interval of once per second back in to the footnote for the affected airplanes. Since the airplane can be operated under parts 121 or 125 using the identical standard, the appendices for each are being corrected.

None of these changes will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Since these requirements were intended in the original rules, there is no new impact on safety. The correction of these errors and omissions will prevent future confusion and require less contact between the FAA and regulated entities who must comply with the regulations.

II. Summary of the Costs and Benefits of the Final Rule

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other

effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This rule has minimal cost because none of the changes outlined above will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Furthermore, since these requirements were intended in the original rules, there is no new impact on safety.

The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

III. Regulatory Notices and Analyses

A. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will have minimal cost because none of the changes outlined above will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Furthermore, since these requirements were intended in the original rules, there is no new impact on safety.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

B. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that none of the rule changes will require action by airplane owners, operators or manufacturers as the affected airplanes already comply with the requirements of the originally adopted rules and the corrections adopted here. Therefore this final rule will have no effect on international trade.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of

\$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

(2) Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The

FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312f and involves no extraordinary circumstances.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

V. How to Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/ or

3. Access the Government Printing Office's Web page at:

<http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit

http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects 14

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Air Carriers, Aircraft, Aviation safety, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. In Appendix E to part 91, revise the entry for Altitude under the column heading “Parameters” to read as follows:

Parameters	Range	Installed system ¹ minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution ⁴ read out
* * * * *				
Altitude.....	-1,000 ft. to max cert. alt. of A/C.	±100 to ±700 ft. (see Table 1, TSO C51-a)	1.....	25 to 150 ft.
* * * * *				

PART 121--OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

4. In Appendix M to part 121, revise footnote 5 to parameter 14a, Yaw control position(s)(fly-by-wire), to read as follows:

Appendix M to Part 121

⁵For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).
For A330/A340 series airplanes, seconds per sampling interval = 1.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

6. In Appendix E to part 125, revise footnote 5 to parameter 14a, Yaw control position(s)(fly-by-wire), to read as follows:

Appendix E to Part 125

⁵For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).
For A330/A340 series airplanes, seconds per sampling interval = 1.

Issued under authority of 49 U.S.C. 106(f) and 44701(a) in Washington, DC,
on June 21, 2013.

Michael P. Huerta
Administrator

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